

**United States Department of Labor
Employees' Compensation Appeals Board**

K.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Everett, WA, Employer**

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**Docket No. 20-0581
Issued: September 14, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 21, 2020 appellant filed an appeal from a July 29, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated August 30, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 29, 2005 appellant, then a 49-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 1, 2005 she injured her neck and back while in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty. OWCP assigned the claim OWCP File No. xxxxxx926 and accepted it for a cervical strain and aggravation of herniated cervical disc C6-7 on February 3, 2006.²

On February 28, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of disability from work commencing February 4, 2018. She indicated that when she returned to work she had restrictions on lifting, standing, bending, and twisting for approximately six months, and that she still experienced pain from her previous injury, but was able to manage her work. Appellant explained that the physical requirements to perform her duties had drastically changed and that she is now required to stand or lean for prolonged periods of time, which required her to constantly reach, bend, twist, and stoop. She stopped work on February 4, 2018.

In a development letter dated March 26, 2018, OWCP notified appellant that her claim was being developed as an occupational disease claim assigned OWCP File No. xxxxxx988 based upon new work factors and an intervening cause she identified in her Form CA-2a in which she explained that the physical requirements of her work duties had drastically changed and required her to stand for prolonged periods. It informed her of the deficiencies of her claim, requested additional factual and medical evidence, and attached a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a medical note dated March 14, 2018, Dr. Laurie Kreiter, Board-certified in family medicine, indicated that appellant had exacerbated her lumbar condition in relation to a change in her work environment. She recounted that she evaluated appellant from February 21 to March 14, 2018 and opined that appellant was severely limited in her ability to stand for more than 15 minutes. Dr. Kreiter recommended that she remain out of work until after her evaluation by a pain specialist on March 20, 2018.

In a March 20, 2018 medical report, Craig Whitfield, a physician assistant, evaluated appellant for back and right leg pain which began at work. He noted that a September 18, 2013 magnetic resonance imaging (MRI) scan revealed stable lumbar spondylosis, an L4 broad-based disc bulge, L5 mild bilateral facet hypertrophy, and S1 moderate bilateral facet hypertrophy. On evaluation Mr. Whitfield diagnosed lumbago and radiculopathy of the lumbar region and recommended that appellant undergo an MRI scan for further evaluation.

In response to OWCP's development questionnaire, appellant submitted an April 4, 2018 statement in which she explained that her entire work area and process had been changed as she was now required to stand for six to eight hours per day with continuous bending, twisting, reaching, and shuffling from side to side. She stated that, due to the new work process, her back pain increased daily until it reached a point to where she could no longer tolerate it. Appellant noted that she had no hobbies that contributed to her injury. She also provided a hand-drawn diagram of her work area.

² The Board notes that appellant has two prior claims involving injuries to her back. Appellant filed a traumatic injury claim related to an April 29, 2002 back injury under OWCP File No. xxxxxx948, which OWCP accepted for a lumbar strain. Appellant subsequently filed a traumatic injury claim for a September 2, 2004 back injury under OWCP File No. xxxxxx953, which OWCP also accepted for a lumbar strain. OWCP has administratively combined OWCP File Nos. xxxxxx926, xxxxxx948, and xxxxxx953, with OWCP File No. xxxxxx926 serving as the master file.

In an April 9, 2018 diagnostic report, Dr. Kelly Lindauer, a Board-certified diagnostic radiologist, performed an MRI scan of appellant's lumbar spine. She diagnosed mild scoliosis, moderate symmetric posterior paraspinal muscle atrophy, spondylosis and facet joint osteoarthritis at L2-3, L3-4, L4-5, and L5-S1, left paracentral disc protrusion with mild cranial migration at L3-4, and chronic calcified left paracentral disc extrusion with caudal migration at L4-5.

In an April 18, 2018 medical report, Dr. Geoffrey Tyson, Board-certified in pain medicine, evaluated appellant for right-sided low back pain. He noted that an April 9, 2018 MRI scan of her lumbar spine revealed foraminal stenosis at L3-4 and L4-5. Dr. Tyson diagnosed lumbago, radiculopathy of the lumbar region and chronic pain syndrome. He recommended that appellant undergo a higher volume right L4-5 transforaminal epidural steroid injection to treat her condition.

In an April 25, 2018 duty status report (Form CA-17) with an illegible signature, a healthcare provider diagnosed a lumbar strain caused by continuous standing, bending, twisting, reaching, and lifting at work.

By decision dated May 2, 2018, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish that her medical condition was causally related to the accepted factors of her federal employment.

OWCP continued to receive additional evidence. In a May 9, 2018 medical report, Dr. Kreiter noted appellant's previous lumbar injuries dating back to 2004 relating to her federal employment. Appellant explained that her new work duties required her to perform more reaching and twisting motions. Dr. Kreiter opined that the change of the mail sorting device at work caused appellant to overuse her lumbar spine because of the increased need for reaching and stooping. She diagnosed overuse syndrome of the lower back, strain of the lumbar region, exacerbation of chronic back pain, degenerative disc disease, lumbar and lumbar radiculopathy, and opined that appellant's conditions were directly exacerbated by the change in appellant's work environment as she had previously been stable in her work environment prior to her work environment changing.

In a May 16, 2018 medical report, Dr. Tyson reevaluated appellant for her low back and right leg pain. He opined that Mr. Whitfield's previous evaluation should have provided adequate documentation for continued treatment of her injury and diagnosed radiculopathy of the lumbar region, lumbago, and other chronic pain.

In a letter of even date, Dr. Kreiter provided that she had been appellant's primary care provider for 15 years and that she had reviewed the medical notes from Dr. Tyson's evaluation. She opined that there was no doubt that appellant's chronic lumbar radiculopathy was directly exacerbated by the repetitive twisting, bending, reaching, and stooping from the new equipment appellant was required for her work. Dr. Kreiter concluded that she did not doubt the causal relationship between appellant's current medical conditions and her change in work environment.

On June 28, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated August 30, 2018, OWCP's hearing representative affirmed the May 2, 2018 denial of the claim, finding that the medical evidence of record did not explain how appellant's work injury caused or contributed to her preexisting degenerative lumbar conditions.

On July 14, 2019 appellant requested reconsideration of OWCP's August 30, 2018 decision.

By decision dated July 29, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.⁸ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar

³ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *See* Federal (FECA) Procedure Manual, *supra* note 5 at Chapter 2.400.8(c) (February 2000).

condition or the same part of the body, doubling is required.⁹ Herein, appellant has an accepted claim for a cervical strain, an aggravation of herniated cervical disc C6-7, and a lumbar strain under OWCP File No. xxxxxx926. However, the evidence pertaining to OWCP File No. xxxxxx926 is not part of the case record presented before the Board.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx926 so it can properly determine whether the medical evidence of record is sufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted factors of her federal employment. Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 14, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

⁹ *Id.*; *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).